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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing )  
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Filing Date: February 19, 2020 ) Case No.: PSH-20-0044  
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Issued:

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**Administrative Judge Decision**  
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Katie Quintana, Administrative Judge:

This Decision concerns the eligibility XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be restored.

**I. Background**

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. On April 29, 2019, the Individual tested positive on a random breath alcohol test (BAT) at work. Exhibit (Ex.) 9 at 5. The Individual estimated that he consumed ten to twelve beers the day prior to the positive BAT. Ex. 16 at 5. In October 2019, the Individual met with a DOE consulting psychologist (DOE Psychologist) for an evaluation. Ex. 16 at 1. Following the evaluation, the DOE Psychologist issued a psychological evaluation report (Report), in which she concluded that the Individual met the diagnostic criteria for Alcohol Use Disorder (AUD), Mild, in early remission, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*. *Id.* at 5.

Due to unresolved security concerns related to the Individual’s alcohol consumption, the local security office (LSO) informed the Individual, in a Notification Letter dated January 22, 2020 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual’s eligibility to hold a security clearance. In an attachment to the Notification Letter,

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<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

the LSO explained that the derogatory information raised security concerns under Guideline G (alcohol consumption) of the Adjudicative Guidelines. Ex. 1.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted twenty-one numbered exhibits (Exhibits 1–21) into the record and presented the testimony of the DOE Psychologist. The Individual introduced seven lettered exhibits (Exhibits A–G) into the record, and presented the testimony of seven witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G relates to security risks arising from excessive alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual’s reliability and trustworthiness. Adjudicative Guidelines at ¶ 21. In citing Guideline G, the LSO relied upon: (1) the DOE Psychologist’s determination that the Individual met the diagnostic criteria for AUD, Mild, in early remission, under the *DSM-5*; (2) the Individual’s positive BAT at work; and (3) the Individual’s charges of Underage Drinking in 2001,

Driving While Intoxicated (DWI) in 2007, and Consumption of Alcohol on Premises After Hours in 2008. Ex. 1.

#### **IV. Findings of Fact**

On the morning of April 29, 2019, the Individual was required to undergo a random BAT. Ex. 9 at 5. The Individual tested positive on the initial screening and confirmation BATs, administered approximately twenty minutes apart.<sup>2</sup> *Id.* The following day, the Individual submitted a statement to the LSO, in which he admitted that he consumed approximately ten beers the day prior to the positive BAT. Ex. 8 at 2.

In August 2019, the LSO issued the Individual a letter of interrogatory (LOI) concerning his alcohol consumption habits and the circumstances of his positive BAT. Ex. 13. The Individual indicated that, since the positive BAT, he had completed an intensive outpatient treatment program (IOP), was abstaining from alcohol, and did not intend to consume alcohol for the foreseeable future. *Id.* at 9; *see also* Ex. A (reflecting the Individual's graduation from an IOP). The Individual acknowledged that he had been charged with three alcohol-related offenses between 2001 and 2008, and that he had completed an IOP after being charged with DWI in 2007. Ex. 13 at 9.

In October 2019, the Individual met with the DOE Psychologist for a clinical evaluation. Ex. 16 at 1. During the clinical interview, the Individual estimated that he consumed approximately ten to twelve beers on the day prior to the positive BAT. *Id.* at 5. He explained that although he had previously completed an IOP in 2007, he "did not respond well" to the twelve-step program utilized at the IOP. *Id.* The Individual indicated that he had taken his participation in the 2019 IOP educational meetings "much more seriously" and sought to attend the aftercare "on an indefinite basis." *Id.* He stated that he had "no plans to drink" in the future, but that "he would like to think that 'maybe one day [he] could go out with friends for dinner and have one drink.'" *Id.*

The DOE Psychologist requested that the Individual undergo an Ethyl Glucuronide (EtG) and a Phosphatidylethanol (PEth) test to assess whether he had recently consumed alcohol. *Id.* at 4. Both tests were negative, and the physician, who interpreted the tests, indicated that the negative test results were strong evidence that the Individual had not consumed alcohol for at least three days prior to the test or consumed alcohol on a "regular, heavy basis within a few weeks of the test, and ha[d] not [participated in] binge drinking episodes or moderate drinking within about one week of the test." *Id.* at 11. The DOE Psychologist also contacted the lead counselor for the IOP (Individual's Counselor). *Id.* at 4. The Individual's Counselor indicated that the Individual had completed the IOP with a "high level of voluntary participation" and "fully grasped the treatment and is wary of the consequences should he drink again in the future." *Id.* The Individual's Counselor also indicated that the Individual was regularly attending aftercare. *Id.* at 5.

The DOE Psychologist subsequently issued the Report, in which she opined that the Individual met the diagnostic criteria for AUD, Mild, in early remission, under the *DSM-5*. *Id.* The DOE Psychologist recommended that the Individual demonstrate rehabilitation by continuing to abstain from alcohol, documenting his abstinence by undergoing five PEth tests, and continuing to attend aftercare until he had established one year of abstinence from alcohol. *Id.* at 6.

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<sup>2</sup> Although there were two separate BATs, a screening and confirmation test, throughout the decision I will refer to the two April 2019 BATs as one test.

From December 2019 to November 2020, the Individual underwent monthly PEth testing. Ex. E; Ex. F. Each of the tests was negative. *Id.* The Individual was also subject to several random BATs at work, each of which was also negative. Ex. B.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns noted by the LSO under Guideline G of the Adjudicative Guidelines. Accordingly, I find that restoring the Individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should be restored. The specific findings that I make in support of this decision are discussed below.

The Individual testified that he had found the 2019 IOP more engaging and helpful than the 2007 IOP because it was "more analytical" and focused on the science of addiction and stimulated his desire to learn. Tr. at 78. The Individual noted that he enjoys the IOP's aftercare program as it addresses how to move forward. *Id.* at 81. Conversely, he felt that the 2007 IOP, which was based upon the twelve-step program of Alcoholics Anonymous, was overly focused on the mistakes of the past. *Id.* at 81–82. The Individual testified that he continued to attend aftercare and monthly one-on-one counseling after completing the IOP up to the date of the hearing. *Id.* at 80. He explained that, after the outbreak of the COVID-19 pandemic, he organized socially distanced meeting with his aftercare group as he felt it was important to maintain consistency. *Id.* at 83

The Individual reported that he last consumed alcohol on April 28, 2019, the day before the positive BAT. *Id.* at 91. He indicated that he had no plans to resume drinking in the future. *Id.* at 94. The Individual testified that the network he has established through volunteering, work, and the IOP aftercare group provide a strong support system to aid him in abstaining from alcohol. *Id.* at 101–102.

The Individual's wife also testified that the Individual had accepted responsibility for the positive BAT and had made sincere efforts to address his problematic alcohol consumption through the IOP. Tr. at 12–13. She stated that the Individual had a positive attitude about the IOP and supporting others in their efforts to abstain from alcohol. *Id.* at 13–14. The Individual's wife indicated that they did not keep alcohol in their home and that she had not observed the Individual consume alcohol since April 2019. *Id.* at 18.

The Individual's Counselor testified that the Individual was an active and engaged participant in the IOP. *Id.* at 111–12. The Individual's Counselor corroborated the Individual's account of how he had organized and led the aftercare group when the IOP was not operating due to COVID-19. *Id.* at 116–17. In turning to the Individual's prognosis, she stated that it was "[a]s positive as would be realistic in the field" and that she had "no doubt that [the Individual] will stay sober." *Id.* at 120.

The DOE Psychologist testified after observing the entire hearing. She indicated that the Individual had met all her treatment recommendations and that his AUD was now in sustained remission. *Id.*

at 124–25. Moreover, she expressed that she had no concerns with the Individual’s ability to control his drinking in the future. *Id.* at 124.

### **Guideline G**

Diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). If an individual acknowledges his pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, or if an individual has successfully completed a treatment program, along with any required aftercare, and has demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations, he may be able to mitigate the security concern. *Id.* ¶ 23(b), (d).

In this case, the DOE Psychologist diagnosed the Individual with AUD, mild, in early remission. However, she now opines that the Individual is in sustained remission. Clearly, the Individual he has accepted responsibility for the poor judgment that led to the positive BAT and has taken proactive steps to address his problematic alcohol consumption. He has successfully completed an IOP and continues to attend and actively participate in aftercare, and he has been abstinent from alcohol for approximately 18 months, a claim which is supported by his monthly PEth tests.

It is clear, based upon the evidence in the record and the testimony presented at the hearing, that the Individual has taken substantial steps to overcome the concerns regarding his alcohol consumption. As such, I find that the Individual has adequately established that restoring his security clearance will not endanger the common defense and security, and that doing so is clearly consistent with the national interest. Thus, I conclude that the Individual has sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline G.

### **VI. Conclusion**

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I find that the Individual’s access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals